

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DEBRA HATTEN-GONZALES, Individually
and on behalf of all Others similarly
situated,

Plaintiffs,

v.

Civil No. 88-0385 KG/CG

BRENT EARNEST, Secretary
of the New Mexico Human Services
Department,

Defendant.

**ORDER DENYING DEFENDANT'S EMERGENCY MOTION
TO CONTINUE HEARING AND FOR PLAINTIFFS TO PROVIDE
A WITNESS LIST AND PROFFER OF TESTIMONY**

THIS MATTER comes before the Court upon Defendant *The New Mexico Human Services Department's Opposed Emergency Motion to Continue the April 28, 2016 Hearing* ("Motion"), (Doc. 667), filed on April 20, 2016. In the Motion, Defendant New Mexico Human Services Department ("HSD") asks this Court to continue the hearing on its *Order to Show Cause*, (Doc. 620), set for April 28, 2016 at 8:30 a.m., (Doc. 631), to allow Defendant to take depositions of certain witnesses that may testify at the hearing concerning allegations in Plaintiffs' *Notice of Additional Evidence of Non-Compliance* ("Notice"). (Doc. 664). After reviewing the Motion and relevant law, the Court finds that the Motion is not well-taken and should be **DENIED**.

Defendant argues that it has just been made aware, by Plaintiffs' Notice, (Doc. 664), of additional evidence regarding Defendant's compliance with Court orders on the prioritization of applications for expedited food benefits. Specifically, in the Notice, Plaintiffs state they have evidence that Defendant misrepresented its progress in

complying with certain Court orders. (*Id.* at 2). During a telephonic status conference on April 19, 2016, Plaintiffs further explained that they intend to call only one witness, who is an HSD employee, to testify at the upcoming hearing on April 28, 2016 that Defendant has not been properly processing applications for expedited benefits on a systemic level. (See Doc. 666 at 1–2). Defendant wishes to continue the hearing in order to depose this witness.

The Tenth Circuit has held that there is no constitutional right to discovery in a post-judgment contempt proceeding to enforce a consent decree. *Solis v. China Start of Wichita, Inc.*, No. 08-1005-WEB, 2011 WL 4971477, at *2 (D. Kan. Oct. 13, 2011) (unpublished) (citing *F.T.C. v. Kuykendall*, 371 F.3d 745 (10th Cir. 2004)). Indeed, “[w]hen analyzing claims relating to a party’s ability to present its case, we apply the longstanding rule that in civil contempt proceedings all that is required to satisfy the Due Process Clause is that defendants be given reasonable notice and an opportunity to be heard.” *F.T.C.*, 371 F.3d at 754 (internal citation omitted).

Thus, the issue here is whether Defendant will have reasonable notice and an opportunity to be heard as to whether it is in compliance with several of this Court’s orders at the hearing on April 28, 2016. While the allegations in the Notice have just been made on April 18, 2016, the Court held a telephonic status conference on April 19, 2016, in part to address Plaintiffs’ Notice. At the status conference, Defendant was given an opportunity by the Court to question Plaintiffs directly as to the nature of the evidence. (See Doc. 666). Plaintiffs were ordered to provide Defendant with the information requested during the status conference, and Defendant represented that he

was satisfied with Plaintiffs' response and that he was ready to proceed with the hearing on April 28, 2016. (*Id.*).

Defendant contends that he believes he has the right to depose his own employee because he or she will be testifying within the scope of his or her official employment. (Doc. 667 at 2). Defendant provides no authority for this proposition. See *F.T.C.*, 371 F.3d at 754.

As a result, and for the foregoing reasons, the Court finds that Defendant has had reasonable notice and will have an opportunity to be heard at the April 28, 2016 hearing regarding its compliance with Court orders and the appropriate relief.

IT IS THEREFORE ORDERED that *The New Mexico Human Services Department's Opposed Motion to Continue the April 28, 2016 Hearing*, (Doc. 667), be **DENIED**.

IT IS FURTHER ORDERED that the parties' witness and exhibit lists, originally ordered to be filed on April 21, 2016, (Doc. 660), be filed on April 21, 2016 at 5:00 p.m. Plaintiffs shall provide a proffer in support of their Notice, (Doc. 664), which will include the identity of any witnesses, a summary of the anticipated testimony, and reference to any and all documents such that Defendant is provided with reasonable notice to respond. The proffer shall also be filed on April 21, 2016 at 5:00 p.m.

IT SO ORDERED.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', is written over a horizontal line.

THE HONORABLE CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE